

In re ) Fair Hearing No. 10,727  
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Appeal of )

The petitioner appeals the decision of the Department of Social Welfare denying his application for Food Stamps and Medicaid benefits based on excess resources in the form of a vehicle and life insurance policies.

1. On or about May 28, 1991, the petitioner and his wife applied for Food Stamps and Medicaid for themselves and their four children aged seven to thirteen. The petitioner owns a farm and has had a recent drop in income due to milk price decreases. His wife works outside of the farm at a day care center. He provided documentation to the Department showing that he owned a vehicle with a considerable encumbrance, two life insurance policies and four small childrens' savings account.<sup>1</sup>

2. A short time after their application, the petitioner's wife received a telephone call from the DSW worker who was processing their application informing them that they had excess resources and that there was no point in continuing the application. He encouraged the petitioner's wife to withdraw the application which after some discussion

with her husband she agreed to. On June 17, 1991 the petitioner was sent a denial letter by the Department with the reason given for the Food Stamps denial as "You withdrew your application" and for the Medicaid denial as "You have asked that the Department deny your application".

3. The petitioner did not appeal that notice. About a month later, the petitioner and his wife discussed their denial with a friend who works for the state. She advised them that she felt they should have gotten the reasons for their ineligibility in writing and encouraged them to reapply.

4. On August 6, 1991, the petitioner reapplied with the help of a community action program advocate. At that time he reported that his resources consisted of the farm he owned with his brother, a 1989 Astro Chevy van valued at \$7,475.00 on which the petitioner still owes \$11,621.44 (32 payments of \$363.17 per month) to the General Motors Acceptance Corporation; and two life insurance policies, one on himself with a cash value of \$1,400.00 and the other on his wife with a cash value of \$990.00. There are already outstanding loans on these policies of \$1,025.03 and \$410.48 respectively leaving an available total cash value in both policies of \$955.69.

5. The petitioner's Chevy Astro van is the only vehicle owned by the petitioner's household and the only vehicle available to the family's farming enterprise. It is

used to transport the six members of his family when necessary, to run errands for the household, to get his wife to work which is a ten mile round trip and to run all errands for the farm including picking up supplies and equipment needed in the farm business. The petitioner needs but could not afford a pick-up truck for the farm. Until he can afford such a vehicle he will continue to use the mini-van whose back seats are easily removed for large cargo.

6. Based upon this information, the Department determined that the petitioner was \$2,975.00 above allowable resources for the Food Stamp program on the car alone once the \$4,500.00 allowable resource limit was deducted and he was so notified on August 18, 1991. On August 23, 1991, the petitioner was notified that he was subsequently found to be \$989.44 above the limit for Food Stamps and \$4,944.89 above the limit for Medicaid. On August 30, 1991, the petitioner was notified that he was \$3,344.89 above the limit for Medicaid. No explanation was offered by the Department as to how these figures were reached or why they appear to conflict.

7. On August 23, 1991, the petitioner signed a statement saying he "partially" used his car as a farm vehicle, estimating that he uses it "once or twice a week to do farm errands". He thereafter, on the advice of a legal advocate, kept an actual log of the amounts the auto was used for personal and farm use from September 25 to October 1. The petitioner recorded a total of eight trips that week

totaling about 274 miles for farm use. A copy of that log is attached as Exhibit No. 1. and incorporated herein by reference. His wife used it for a total of 70 miles in the same time period for work and shopping. (Transporting the children was not included as they take the bus to school.) He stated that his use for farm purposes this week was a little above normal because of an unexpected machine breakdown but that it was within the normal range and that he was surprised by how much he really used the van when he kept track of it. The petitioner's accounts of his weekly use of the vehicle is found to be entirely credible and is adopted as a finding herein. It is found as a fact that the petitioner primarily uses his mini-van for farm business and that is essential to the production of his family's income.

#### ORDER

The Department's decision is reversed and the petitioner and his family should be found eligible for Medicaid and Food Stamps pursuant to their May 28, 1991 application.

#### REASONS

The handling of the petitioner's application reflects a basic lack of understanding by the worker of the Department's regulations and the appropriate methods of eligibility determination. It is all but unthinkable that a worker could have called up an applicant and encouraged the withdrawal of an application because he felt the applicant was ineligible. It is equally unexplainable that a

petitioner could be sent a rationale which said you were denied because you asked to be denied. Such a method unfairly avoids the petitioner's well-established right to have the reasons for denial set out in written form which might form the basis for an appeal<sup>2</sup> The Board has specifically found this practice to be in violation of the Department's regulations at W.A.M. § 2143 and has stated that an oral denial followed by a written statement is not sufficient to inform the applicant that he has a grievance to appeal. Fair Hearing No. 6253. Therefore, the first legally sufficient denial of his May application only occurred when he was notified of the reasons in late August.

As his appeal of that decision was timely, it must be concluded that the petitioner has made a timely appeal of his May 28, 1991, application as well.

The series of denial letters finally received by the petitioners in August unfortunately shed little light on the specific reason for the denial but do indicate it has something to do with resources. They are contradictory and confusing and as the facts show, at least as to Medicaid eligibility, patently wrong. The Department had been supplied on at least two occasions, once in May and once in August, with documentation which made it clear that the "equity value" of the petitioner's car is zero. The Medicaid regulations provide:

The equity value of up to \$1500 for one vehicle used as a primary means of transportation per assistance group is excluded as a resource. (Equity value equals fair

market value minus debt owed).

M @ 342.2

Therefore, as the petitioner's other resources are indisputably<sup>3</sup> under the \$3,600 resource limit for a family of six (See P-2420C), the petitioner should have been found eligible for Medicaid at first glance. This did not happen at first, second, or even third glance. In fact, the Department maintained its position that the family was ineligible for Medicaid straight through the Commissioner's Review process and into the hearing. It has offered no explanation to the petitioner or the Board as to why this unwarranted decision has been maintained. This failure suggests a sad lack of a meaningful review at the Commissioner's level which is unfair to both the petitioner and a waste of the Board's resources.

The family's eligibility for Food Stamps required an assessment of the purposes and use of the petitioner's vehicle to determine its value relative to the \$2,000 maximum limit. The regulation at F.S.M. @ 273.8(c) basically requires the inclusion of all property as a resource unless it is specifically excluded. Pertinent excluded resources include:

. . . .

3. Licensed vehicles shall be excluded as specified in paragraph (h) of this section. The exclusion also includes unlicensed vehicles on those Indian reservations that do not require vehicles driven by tribal members to be licensed.

. . .

5. Property, such as farm land or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

. . .

F.S.M. § 273.8(e)

This section on handling of licensed vehicles provides that:

The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. The entire value of any licensed vehicle shall be excluded if the vehicle is:
  - i used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat. Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated her/his self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming;
  - ii annually producing income consistent with its fair market value, even if used only on a seasonal basis;
  - iii necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or of a migrant farmworker following the work stream;
  - iv used as the household's home and, therefore,

excluded under paragraph (e)(1) of this section; or

- v necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

2. The exclusion in parts H.1.i through iv will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.
3. All licensed vehicles not excluded under paragraph (h)(1) of this section shall individually be evaluated for fair market value and that portion of the value which exceeds \$4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles. For example, a household owning an automobile with a fair market value of \$5,500 shall have \$1,000 applied towards its resource level. Any value in excess of \$4,500 shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market values of two or more vehicles shall not be added together to reach a total fair market value in excess of \$4,500.
4. Licensed vehicles shall also be evaluated for their equity value, except for:
  - i. Vehicles excluded in paragraph (h)(1) of this section;



- ii One licensed vehicle per household, regardless of the use of the vehicle; and
  - iii Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to the household) to and from employment or to and from training or education which is preparatory to employment, or to seek employment in compliance with the employment and training criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of employment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e)(3), (4), or (5) of this section shall be attributed toward the household's resource level.
5. In the event a licensed vehicle is assigned both a fair market value in excess of \$4,500 and an equity value, only the greater of the two amounts shall be counted as a resource. For example, a second car which is not used by a household member to go to work will be evaluated for both fair market value and for equity value. If the fair market value is \$5,000 and the equity value is \$1,000, the household shall be credited with only the \$1,000 equity value, and the \$500 excess fair market value will not be counted.
6. In summary, each licensed vehicles shall be handled as follows: First it will be evaluated to determine if it is exempt as an income producer or as a home. If not exempt, it will be evaluated to determine if its fair market value exceeds \$4,500. If worth more than \$4,500, the portion in excess of \$4,500 for each vehicle will be counted as a resource. The vehicle will also be evaluated to see if it is equity exempt as the household's only vehicle or necessary for employment reasons. If not equity exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than \$4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

F.S.M. § 273.8(h)

In this case the information needed to assess the use

does not appear to have been undertaken until after a decision was reached to deny the family. When all the evidence was in, however, it was clear that this mini-van was as essential to the operation of the farm as to the transportation of family members and, when detailed records were kept for a weeks' time, it was shown that the van was actually used four times more for farm business than for strictly family purposes. Even allowing for the fact that this is on the high end of the weekly normal range of trips, it is not difficult to conclude that the van is primarily used in the farming business. Not only is the van primarily used for the farmer's business it is clear that the van is essential to the production to the family's income. Without this vehicle, there would be no way for the farmer to run to a store for a broken part or some material and supplies as needed.

This vehicle should be excluded from consideration as a resource under F.S.M. § 273.8(h)(1)(i) because it is primarily used in the family's farming business. It is therefore not necessary to decide whether it may also be excluded under 273.8(e)(5) as property essential to the self-employment of a family member, although there is a good argument that it also fits that category. It is clear that without this vehicle, the family would have an even more difficult time producing income than they now have and that the exclusion of this vehicle as a resource is consistent with the Food Stamp program's policy of not requiring

persons to liquidate resources used to produce income for their self-support. The family's other resource, the life insurance policy, is well under the \$2,000 resource limit. The Department's decision should, therefore, be reversed back to May 28, 1991, with apologies to the petitioner and his wife for the unwarranted delay in determining their eligibility.

FOOTNOTES

<sup>1</sup>The petitioner's first application in May also listed approximately \$900 in children's bank accounts. Those accounts were not, however, listed as reasons for the denial by the Commissioner or argued at hearing. It is therefore assumed that they are no longer at issue.

<sup>2</sup>M 341.1 provides that "The cash value of life insurance owned by members of the assistance group shall be counted as a current resource except for any portion of the cash value currently being used as collateral for a loan."

<sup>3</sup>After hearing, the Department offered to reconsider its decision on the use of the vehicle if the petitioner kept a log for a longer period of time. Given the length of time the family has already waited for a competent determination of their eligibility (over four months), such a suggestion is just not tenable.

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